

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JONATHAN LEE SMITH,

*Plaintiff,*

VS.

MONEN, *et al.*

### *Defendants.*

2:09-cv-01840-GMN-GWF

## ORDER

D. *Scilicet*

This *pro se* prisoner civil rights action comes before the Court after the service copy of the prior order (#6) was twice returned in the mail with a notation that plaintiff no longer is at the facility (see ## 8 & 9).

The Clerk, in the docket entries for ## 8 & 9 included the following statement: "NVD Inmate Search indicates Plaintiff's ID number is correct and that he is still located at HDSP." The Clerk apparently is referring to the inmate search feature on the Nevada Department of Corrections (NDOC) website at: <http://www.doc.nv.gov/notis/search.php>

The Court notes that the page for the search feature on the website expressly states, emphasized in red print:

The information provided here represents raw data. As such, the Department makes no warranty or guarantee that the data is error-free. The information should not be used as an "official" record by any law enforcement agency or any other entity.

The Clerk proceeded properly in re-sending the first mailing based upon an internal administrative review of the NDOC website. The Clerk did not proceed properly, however, in making an official notation on the docket of this Court reflecting content of the website as representing a fact. Rule 201 of the Federal Rules of Evidence permits a court to take judicial notice of adjudicative facts. Such notice, under certain circumstances and pursuant to defined legal criteria, may be taken of the content of some material on the internet. Judicial notice, however, is to be taken by an Article III judge, under the standards and procedures

1 established in Rule 201, not by a deputy clerk accessing the internet.

2       In the present case, the officials who would have custody of plaintiff if he still were at  
3 High Desert State Prison twice have returned mail stating that plaintiff no longer is at that  
4 facility. The NDOC website expressly states that the search feature on that website is not  
5 necessarily error-free and is not to be used as an official record by other entities. Under Local  
6 Rule LSR 2-2, plaintiff must immediately file with the Court written notification of any change  
7 of address. The record properly before this Court reflects that he has not done so, and the  
8 matter therefore is subject to dismissal on the record presented. If following dismissal,  
9 plaintiff establishes that he in fact was at the facility and that his legal mail was twice returned  
10 in error, the Court can address that situation on the record then presented. Again, however,  
11 the matter presently is subject to dismissal on the record presented, the Clerk's improper  
12 references on the docket to a NDOC internet search feature notwithstanding.

13       IT IS ORDERED that this action shall be DISMISSED without prejudice. The Clerk of  
14 Court shall enter final judgment accordingly.

15       DATED this 20th day of August, 2010.

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GLORIA M. NAVARRO  
United States District Judge